



The Competitive Carriers Association

Rural Cellular Association

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March 15, 2012

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: RM-11592

Dear Ms. Dortch:

On March 13, 2012, Tim Donovan and I met with Louis Peraertz, Legal Advisor to Commissioner Mignon Clyburn. We discussed the urgent need for a lower 700 MHz interoperability rule as a result of the forthcoming Notice of Proposed Rulemaking (NPRM). RCA expressed support for the forthcoming NPRM and is pleased with its focus as identified in the FCC's March Open Meeting agenda.¹ The NPRM should seek to resolve the negative consumer and market impacts of AT&T's continued utilization of 3GPP Band Class 17 in the lower 700 MHz spectrum band. Collapsing 3GPP Band Class 17 into 3GPP Band Class 12 will resolve the single greatest technical impediment to competitive carriers deploying 4G LTE services. Because of AT&T's control over the device market, particularly in the lower 700 MHz spectrum band, and based on the record developed in the interoperability proceeding,² the FCC must promptly issue an interoperability requirement. Upon restoration of interoperability in the lower 700 MHz band, several competitive carriers stand ready to unleash investment and deploy next-generation mobile broadband networks in the lower 700 MHz A Block.

At the meeting, RCA stressed that voluntary efforts to resolve these interference claims are not sufficient to facilitate the development of devices in the lower 700 MHz spectrum band.³ AT&T's manipulation of the 3GPP process proves how a single dominant carrier can and will leverage its market power for anticompetitive ends.⁴ An FCC requirement is necessary to prevent AT&T from further

¹ Commission Meeting Agenda, Federal Communications Commission, FCC to Hold Open Commission Meeting Wednesday, March 21, 2012, Mar. 14, 2012.

² The interoperability proceeding includes the Good Faith Purchasers Alliance Petition, the recent AT&T- Qualcomm transaction, and the forthcoming NPRM. RCA has requested that the FCC incorporate into the record developed from the NPRM the documents filed in the AT&T – Qualcomm transaction and the Good Faith Purchasers Alliance Petition. Letter of Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, filed in WT Docket No.s 05-265, 06-150, 11-18, 11-186, 12-4; RM-11497; RM-11592 (Jan. 18, 2012).

³ See Letter of Tamara Preiss, Vice President, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, filed in RM-11592 (Jan. 25, 2012) at 2.

⁴ Letter of Michele C. Farquhar, Counsel to Vulcan Wireless, Hogan Lovells, to Marlene H. Dortch, Secretary, FCC, filed in WT Docket No. 11-18, RM-11592 (Dec. 14, 2011) (including analysis detailing "coercive and potentially deceptive practices in the industry's standards body" by AT&T). The FCC itself expressed concerns about AT&T's dominance and the effect on the lower 700 MHz market. See *In re* Application of AT&T Inc. and

using its monopsony power to impede lower A Block licensees from deploying 4G LTE mobile broadband throughout the U.S.

RCA has long advised the FCC of the negative impacts on carriers and consumers without interoperability. Over ten years ago, in 2001, RCA warned the FCC that prematurely sunseting the cellular interoperability requirement would destroy seamless roaming, hinder competition and place rural and regional carriers at a competitive disadvantage.⁵ These harms are certainly true in the current context. Verizon has launched LTE in 203 markets and AT&T has launched LTE in 28 markets. Only one competitive carrier, MetroPCS, has launched LTE. Additional competitive carrier LTE deployments have been delayed and/or limited by the continued fragmentation of the lower 700 MHz spectrum band. This is a direct result of giving the duopolists a competitive head-start. Upon imposing an interoperability requirement, competitive carriers will be ready to deploy 4G LTE, building upon \$1.7 billion of investment of 12 MHz of prime, 4G spectrum.

To correct course, RCA proposed that the FCC sunset use of 3GPP Band Class 17, replaced by 3GPP Band Class 12, within 12 months from the effective date of an Order. RCA also urged the FCC to issue such a rule by the end of 2012. The sooner AT&T transitions to Band Class 12, the easier and least costly it will be. In fact, AT&T has begun notifying subscribers that they should upgrade their 2G devices to avoid service interruptions, as it looks to re-farm 2G spectrum for HSPA+ use.⁶ With more and more AT&T customers turning in handsets as a result of AT&T's network upgrades, now is the time to transition to Band Class 12. The FCC would be remiss to squander this prime opportunity to promptly sunset Band Class 17.

RCA also discussed public safety's need for full 700 MHz spectrum band interoperability. RCA fully supports public safety's need for full band interoperability for all the reasons RCA supports lower band interoperability. Interoperability will encourage affordability and availability of 4G LTE devices, enhance competition by facilitating widespread deployment of broadband services, and offer public safety and consumers greater roaming opportunities among 700 MHz operators.⁷ Full 700 MHz band interoperability should be the FCC's ultimate public policy goal. However, lower band interoperability is achievable in the short term and should not be slowed by the complex issue of full band interoperability. As a result of the AT&T-Qualcomm transaction and the Good Faith Purchasers Alliance proceeding, the record supporting lower 700 MHz band interoperability is very well developed. The next logical step is an NPRM, followed shortly by an Order, restoring interoperability to the lower 700 MHz spectrum band. Because the record on full band interoperability is less developed and there

Qualcomm Incorporated For Consent To Assign Licenses and Authorizations, *Order*, WT Docket No. 11-18, ¶¶ 66–67 (Dec. 22, 2011) [hereinafter *Qualcomm Order*].

⁵ *In re* Year 2000 Biennial Regulatory Review - Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, *Comments of The Rural Cellular Association*, at 2–3 (July 2, 2001). RCA stated that, “[t]his nationwide ‘network of networks’ would not have become a reality, however, had it not been for the Commission’s initial requirement that all cellular providers utilize a uniform nationwide technological compatibility standard, specifically the Advanced Mobile Phone Service (‘AMPS’) analog cellular compatibility standard.” *Id.* This is true of 4G LTE in the 700 MHz spectrum band.

⁶ Greg Bensinger, *AT&T Urges Customers to Upgrade from 2G Networks*, MarketWatch, Mar. 1, 2012, <http://www.marketwatch.com/story/att-urges-customers-to-upgrade-from-2g-networks-2012-03-01>.

⁷ *Qualcomm Order* ¶ 70.

are additional technical issues that the FCC will need to address,⁸ RCA recommended a Notice of Inquiry to implement the public safety-related provisions of the Middle Class Tax Relief and Job Creation Act of 2012.⁹

This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's Rules.

Sincerely,

/s/

Rebecca Murphy Thompson
General Counsel

cc: Louis Peraertz

⁸ Letter of Harold Feld, Legal Director, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, filed in Docket No. RM-11592, ET Docket No. 10-42, WT Docket No. 04-356 (Mar. 9, 2012) at 2.

⁹ Middle Class Tax Relief and Job Creation Act of 2012, H.R. 3630, 112th Cong. § 6206 (2012).